IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/08/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION No.12672 OF 2003
AND
CRL.M.P.Nos.4321 AND 4322 OF 2003.

V.Jaganathan ... Petitioner

-Vs-

State, by
The Inspector of Police,
Central Crime Branch,
Egmore, Chennai. ... Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure for the relief as stated therein.

For petitioner : Mr.S.Sudarsan

For respondent : Mr.A.N.Thambidurai,
Govt.Advocate(crl.side)

For intervener : Mr.T.L.L.Ramakrishnan

:O R D E R

The above criminal original petition has been filed praying to set aside the order dated 1.4.2003 made in Crl.M.P.No.689 of 2003 in C.C.No.1100 of 1999 to recall the petitioner as P.W.2, which is pending on the file of the Court of XI Metropolitan Magistrate, Saidapet, Chennai.

2. On a perusal of the materials placed on record, upon hearing the learned counsel for the petitioner, learned counsel for the interver and the learned Government Advocate on the criminal side, it comes to be known that the petitioner is the Director of M/s.Ramaniam Real Estates Private Limited, Gandhi Nagar, Adyar, Chennai and he is P.W.2 in the said case, which is registered on a complaint lodged by one Mohan against his sister's daughter by name Maragatha Mani along with two other persons for the offences punishable under Sections 466,471 and 474 IPC. The petitioner would submit that the said Maragathamani sold her lands along with two cents belonging to the said Mohan as his power agent to the customers of the petitioner and the sale deeds were also executed by the said Maragathamani; that all of a sudden, after the buildings were constructed, problems started to galore and the said Mohan issued a lawyer's notice on 28.11.1995 to the

petitioner and the said Maragatha Mani stating that the said Maragathamani forged the power of attorney and sold the lands without his consent; that the said notice was replied by the petitioner on 21.12.1995 and subsequently another notice was also issued by the said Mohan on 5.6.1 997, which was also replied by them on 14.6.1997; that in the meantime, the said Mohan, has lodged a complaint before the respondent herein, who issued a notice to the petitioner to attend an enquiry on 15.6 .1996; that on receipt of the said police notice under Sections 91 and 160 Cr.P.C., he sent a reply through registered post on 17.6.1996 narrating all the incidents; that earlier, on 15.2.1996, the complainant received all the relevant papers from his Advocate.

3. The petitioner would further submit that thereafter he was not examined and no statement was given by him orally to anybody earlier or subsequent to 17.6.1996, the one which he sent in writing; that thereafter also, the Inspector of Police sent notices to come to his Office for giving statement and on no occasion, he has recorded any statement other than the one given by him in writing; that thereafter, he received summons in the above matter from Court to depose evidence as prosecution witness and the Police, who came to serve the summons informed him to come and depose what he has given in writing earlier on 17.6.1996; that on various occasions, the case was adjourned and finally he was examined in chief in January, 2003; that during the course of examination, the Public Prosecutor put certain questions, as if he stated earlier, which he denied and thereafter the Public Prosecutor treated him hostile and sought permission to cross-examine him and the Court granted leave.

4. The petitioner would further submit that during crossexamination, the Public Prosecutor showed a statement to him, said to have been recorded on 24.1.1996 which is factually incorrect and no such statement was given by him on 24.1.1996 and this can be proved beyond doubt by records in the form of police notice sent by the same investigating officer to him subsequently and therefore he deposed that the statement was not given by him and denied the same; that the defence counsel also cross-examined him on 6.2.2003 and his evidence was closed on 6.2.2003 and the case is adjourned for investigating officer's evidence.

5. The petitioner would further submit that on 22.4.2003, he received summons from the Court of XI Metropolitan Magistrate to appear for cross-examination on 2.5.203 and to give evidence; that on verification, it was found that the said Mohan, on whose complaint, the case was registered, filed a petition to engage a Lawyer to assist the prosecution and filed Crl.M.P.No.539 of 2003 praying to reopen the investigation and direct the Additional Deputy Commissionr of Police to investigate various aspects raised therein, seize the original power of attorney from P.W.2 and send the same for handwriting expert for his opinion and to file additional charge sheet array this petitioner as accused and Crl.M.P.No.689 of 2003 to recall this petitioner for cross-examination and the learned Magistrate, without notice to this petitioner, also conducted the enquiry and dismissed the Crl.M.P.No.539 of 2003 and allowed the Crl.M.P.No.689 of 2003, by the order dated 1 .4.2003.

6. The petitioner would further submit that the above petition is not maintainable and it is a clear abuse of process of law; that the above applications are filed with a view to harass him by unnecessarily

dragging on to criminal courts and thereby causing mental agony and forcing him to come to terms; that he has not adduced evidence that he is possessed of original power of attorney; that the charge itself is baseless since the very case is that the power of attorney is forged and without the original power of attorney, the alleged forged document, the charges were framed and now he is compelled to produce a document which is not in his custody and depose evidence on the basis of the statement which is not given by him; that after the evidence is over and that too, when the prosecution has treated him as hostile witness, he is unable to understand as to what sort of evidence, the prosecution is expecting from him as their witness; that there is no scope for further cross-examination according to the sweet wish of the Public Prosecutor and hence the petition is filed by the counsel assisting the Public Prosecutor just to harass him by dragging him to criminal courts and made him wait by way of sadist satisfaction. On such grounds, the petitioner would pray for the relief extracted supra.

7. During arguments, the learned counsel appearing on behalf of the petitioner would only repeat the facts and circumstances brought forth in his application with no new fact or circumstance nor any law pertaining to the subject argued and hence tracing the same is not only going to be a repetition of the facts extracted supra but also will be a time consuming and wasteful exercise.

8. Though no petition has been filed to implead the defactocomplainant as the party to the above proceedings, Mr.T.L.L.Ramakrishnan, Advocate appeared on behalf of the defacto-complainant as intervener and resisted the above petition stating that the property of the defacto-complainant is sold by forging the documents and hence he has to get it ascertained as to with whom the original power of attorney is and hence he has filed a petition before the Court below under Section 311 Cr.P.C. and the

same was allowed by the Court below in full consideration of the facts and circumstances of the case and the above petition filed by P.W.2 is without merit and would pray to dismiss the above criminal original petition.

9. On the part of the learned Government Advocate on the criminal appearing for the prosecution, he would affirm the order of the Court below and would pray to dismiss the above criminal original petition.

10. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for all parties, it could be assessed that the defacto-complainant in the case in hand has filed a petition before the trial Court under Section 3 11 of the Cr.P.C. to re-call P.W.2 for further cross-examination by the prosecution towards establishing the possession of the original power of attorney said to have been parted with by one Maragathamani, the accused therein. The case of the defacto-complainant is that the accused Maragatha Mani, who is none other than his sister's daughter, while selling her lands in favour of the petitioner herein, who is a builder to an extent of 13,000 sq.ft., she has also sold two cents of land belonging to the defacto-complainant, which according to the defacto-complainant was forging his sig nature in the documents, which could

be ascertained by causing production of the original power of attorney, which is said to have been given in favour of the said Maragathamani and according to the defacto-complainant, the said Maragathamani has handed over the said power of attorney in original to this petitioner/P.W.2.

11. P.W.1 is the defacto-complainant. According to the defactocomplainant, regarding the possession of the original power of attorney said to have been given to this petitioner/P.W.2 by the accused Maragathamani, no proper evidence has been elicited by the prosecution at the time of cross-examination of P.W.2 as a hostile witness. On the part of the petitioner/P.W.2, he would firmly deny not only before this Court but also during the time of his examination before the trial Court regarding the original power of attorney being handed over with him by the said Maragathamani and he has specifically mentioned not only in the chief-examination but also in his hostile evidence extracted by the APP in cross-examination and there is no question of any ambiguity or inconsistency or doubtful circumstance created so far as the petitioner's evidence before the trial Court regarding the possession of the original power of attorney by him is concerned. Therefore, it is not proper on the part of the defacto-complainant in seeking to re-examine P.W.2 since absolutely no purpose is going to be served by such examination of P.W.2 again since his evidence regarding the subject in hand, even at the time of his original crossexamination, is definite.

12. It is relevant to point out that what statements have been recorded by the prosecution under Section 161 Cr.P.C. have been properly and elaborately elicited in the cross-examination of the petitioner/ P.W.2 and the hostile witness P.W.2 would deny them. Now citing some notice and reply exchanged by parties and stating that in the said notice, it is indicated that the original power of attorney was parted only with this P.W.2, the defacto-complainant has come forward to file the petition under Section 311 Cr.P.C. before the Court below.

13. At this juncture, it is essential on the part of this Court to go into the question `whether such an application could be filed on the part of the defacto-complainant in his individual capacity, particularly in view of the fact that P.W.2 is not a party to the proceedings but only examined as a witness' and `whether it is proper on the part of the court below to have permitted the defacto-complainant to file the petition regardless of the fact that the case of the prosecution is conducted by the State?'.

14. The petitioner may be the defacto-complainant, but it is entirely the State, which has taken up the responsibility of projecting the case of the prosecution and anything the defacto-complainant wants to project before the Court, it should be only through the agency which is projecting his case i.e. the State through the police and the Public Prosecutor and hence according to the procedures established by law particularly under Cr.P.C., the defacto-complainant could only assist the prosecution, if permitted by the Court and he has absolutely no independent locus standi either to file a petition excluding the Public Prosecutor who is prosecuting the case or would

he have any say with the Court regarding anything that he wants to bring home. Therefore, entertaining the petition filed by the defacto-complainant itself is irregular, no mention need be necessary in processing the same and passing orders on such application filed by the defactocomplainant by himself and therefore it is only proper, in the above circumstances, to hold that at the outset, entertaining the petition filed by the defacto-complainant herein before the trial Court in the manner aforementioned under Section 311 Cr.P.C. itself is improper and not maintainable in law needless to mention about the fate of the enquiry held and the orders passed by the Court below.

15. No irregularity or inconsistency has taken place in the manner that the subject matter has been dealt with by the APP at the time of the examination of P.W.2, which is perfect and no inconsistency or irregularity writs large so as to entertain the application of such sort in the name of re-examination which is out of the scope of the case projected and further since the application of that sort filed by the intervener/defacto-complainant cannot be maintained, this Court, for these reasons, is left with no choice but to set aside the order passed by the Court below.

In result,
(i)the above criminal original petition is allowed.
(ii)The order dated 1.4.2003 made in Crl.M.P.No.689 of 2003 in C.C. No.1100 of 1999 by the Court of XI Metropolitan Magistrate, Saidapet, Chennai is hereby set aside.

Consequently, Crl.M.P.Nos.4321 and 4322 of 2003 are also dismissed.

Index: Yes
Internet: Yes
Rao

To

1.The XI Metropolitan Magistrate,
Saidapet,
Chennai.

2.The Inspector of Police,
Central Crime Branch,
Egmore, Chennai.

3.The Public Prosecutor,
High Court,
Madras.